

### **REMARKS/ARGUMENTS**

This paper is filed pursuant to 37 CFR. §1.114, as part of the submission accompanying a Request for Continued Examination (RCE). Further, this paper addresses issues raised in the Office Action mailed 04 May 2005. This amendment is submitted in compliance with the guidelines of the revised amendment practice. See 1267 Off. Gazette 106.

Claims 32-44 are currently pending. The Examiner indicated that newly submitted claims 34, 35 and 40-42 were directed to an independent invention and would be withdrawn from consideration. The Examiner further indicated that the drawings received on December 17, 2004 were acceptable. Claims 36-38 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claim 32, 43 and 44 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Perali et al (USPN 4,914,762) in view of Marrone (USPN 5,007,449). Claim 33 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Perali et al in view of Marrone and Gewecke (sic) (USPN 3,368,560). Claims 36 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Perali et al in view of Marrone and Canonica (USPN 3,239,956) (sic). Claims 38 and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Perali et al in view of Marrone and Gewecke and further in view of Canonica. Claims 32, 34, 37-39 and 41 have been amended. New Claims 45-49 have been added. No new matter has been added. As set out below, Applicant respectfully submits that the present invention as claimed is patentable over the cited art and urges the Examiner to reconsider the pending rejections.

### **ELECTION/RESTRICTIONS**

The Examiner has indicated claims 34, 35 and 40-42 are directed toward an invention independent or distinct from the invention originally claimed. More specifically, the Examiner indicated that due to the originally claimed invention being drawn only to a container for containing a fluid, the positive recitation of a specific fluid, i.e. a liquid cleanser or emulsifier, in the above claims creates an independent invention. The Examiner constructively elected the originally presented claims for prosecution and withdrew the above claims from consideration, as being non-elected. Applicant respectfully traverses this election and requests reconsideration of this election.

Applicant initially states that it is believed the Examiner did not establish a prima facie case for the restriction. According to the MPEP, inventions as claimed in an application are considered independent only when they are not connected in design, operation, or effect under the disclosure of the particular application under consideration. See, MPEP §§ 806.04, 808.01. Additionally, the facts relied on for this conclusion are in essence the reasons for insisting upon restriction. Moreover, the MPEP indicates this situation is but rarely presented, since persons will seldom file an application containing disclosures of independent things. Thus, the Examiner should concisely state the particular reasons relied on by for holding that the inventions as set forth in Claims 34, 35 and 40-42 are independent. A mere statement of conclusion is inadequate. MPEP §§ 816, 808.01.

The Examiner concluded that the inventions as set forth in Claims 34, 35 and 40-42 were independent due to the recitation of a specific fluid. The Examiner, however, did not indicate how this is unrelated to the claims directed toward a container for containing an unspecified fluid. The Examiner did not discuss any differences of operation, different functions or different effects. See, MPEP §§ 806.04, 808.01. Accordingly, it is respectfully submitted the Examiner did not set forth information to establish a prima facie case to support the above mentioned restriction. Reconsideration is respectfully requested.

It is further submitted the inclusion of the specific types of fluids, i.e. liquid cleansers and emulsifiers, is not a sufficient limitation to the subject claims to render those claims to be considered independent. Through out this particular application, the term "fluids" included cleansers and emulsifiers. See, paragraph 2, lines 2-3; paragraph 8, line 2; paragraph 21, line 9; paragraph 25, line 7-8; and paragraph 28, line 10. Thus, the inclusion of these specific types of fluids were inherently included within the scope of the "fluids" limitation. The specific recitation thereof merely sets out specifically what was included implicitly. Accordingly, these claims as amended are not sufficiently independent to warrant the above restriction requirement. Reconsideration is respectfully requested.

#### DRAWINGS

The Examiner has indicated that the drawings filed on December 17, 2004 are acceptable.

**CLAIMS REJECTION - 35 U.S.C. § 112, SECOND PARAGRAPH**

Examiner Hylton has rejected Claim 36 and 38 under 35 U.S.C. § 112, second paragraph, as being indefinite. More specifically, the limitation of "said liquid cleanser" as set out in these claims is indefinite as having an insufficient antecedent basis. Claim 32, which these claims depend has been amended to positively include such limitation. Accordingly, it is submitted this limitation as used in these claims now has a sufficient basis. Reconsideration of this rejection is respectfully requested.

**CLAIMS REJECTION - 35 U.S.C. § 103(A); CLAIM 32**

Examiner Hylton rejected Claims 32, 43 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Perali et al (USPN 4,914,762) in view of Marrone (USPN 5,007,449). In making this rejection, Examiner Hylton stated that Perali disclosed all aspects of this claim except for a transfigurible slit disposed near the sealed end of the hollow cylinder. However, according to the Examiner, Marrone so discloses and is obvious to combine these references.

Perali teaches an inflatable air cushion having a truncated pyramid structure for use with seats, beds and mattresses. Perali utilizes the truncated pyramid structure to maintain an optimal placement while in use. There is no teaching, suggestion or motivation to include liquid cleanser, such as liquid soap, inside this air cushion. Moreover, this reference only teaches or suggests its structural design to be used as a cushion. The inclusion of the Marrone closure does not include, suggest, teach or provide any motivation for the inclusion of a liquid cleanser inside neither the Perali or its container disclosed therein.

The present invention, as set forth in Claim 32, as amended, discloses a flexible container having a chamber containing a liquid cleanser. This liquid cleanser is a different, non-disclosed composition of matter than the liquid disclosed in Perali. This is due to Perali being structurally designed for improved lumbar support while sitting. It is respectfully submitted that Perali does not suggest or teach the use of a liquid cleanser. Accordingly, the combination of Perali and Marrone do not disclose, teach or suggest all the elements of Claim 32, as amended, nor the elements of dependent Claims 43 or 44.

Reconsideration of this rejection is respectfully requested.

**CLAIMS REJECTION - 35 U.S.C. § 103(A); CLAIM 33**

Examiner Hylton rejected Claim 33 under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to Claim 32, and further in view of Gewecke (USPN 3,368,560). In making this rejection, Examiner Hylton stated that Perali disclosed all aspects of this claim except for a transfigurable slit disposed near the sealed end of the hollow cylinder nor teach a hanging means on the flexible container. However, according to the Examiner, Marrone discloses the transfigurable slit and Gewecke discloses the hanging means, and it is obvious to combine these references. As set out below, Applicant traverses this rejection and seeks reconsideration.

As set out above, Perali does not disclose the inclusion of liquid cleanser. The inclusion of Marrone and Gewecke do not provide any teaching, suggestion or motivation for the inclusion of liquid cleanser with the container of Perali. Accordingly, it is respectfully submitted that these references do not render Claim 33, as depending on Claim 32, unpatentable. Reconsideration is respectfully requested.

**CLAIMS REJECTION - 35 U.S.C. § 103(A); CLAIMS 36 AND 37**

Examiner Hylton rejected Claims 36 and 37 under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to Claim 32, and further in view of Canonica (USPN 3,239,956).

As set out above, Perali does not disclose the inclusion of liquid cleanser. The inclusion of Marrone, Gewecke or Canonica do not provide any teaching, suggestion or motivation for the inclusion of liquid cleanser with the container of Perali. Accordingly, it is respectfully submitted that these references do not render Claims 36 or 37, as depending on Claim 32, unpatentable.

Moreover, Canonica is directed toward an animated marine display having a transparent tank made from glass, plastic or other suitable material. (Col. 1, Line 72 - Col. 2, Line 2) It is not directed toward an inflatable bag or container, nor is there any teaching or suggestion for the inclusion of such material. Additionally, Perali is directed toward an inflatable air cushion having a truncated pyramid structure for use with seats, beds and mattresses. There is no teaching or suggestion to include any features of a marine display

contained with a glass-type tank. Thus, there is no motivation, suggestion or teaching to combine these references.

Based on the above, reconsideration of this rejection is respectfully requested.

**CLAIMS REJECTION - 35 U.S.C. § 103(A); CLAIMS 38 AND 39**

Examiner Hylton rejected Claims 38 and 39 under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to Claim 33, and further in view of Canonica (USPN 3,239,956).

As set out above, Perali does not disclose the inclusion of liquid cleanser. The inclusion of Marrone, Gewecke or Canonica do not provide any teaching, suggestion or motivation for the inclusion of liquid cleanser with the container of Perali. Accordingly, it is respectfully submitted that these references do not render Claims 38 or 39, as depending on Claim 32, unpatentable.

Moreover, as set out above, Canonica is not directed toward an inflatable bag or container, nor is there any teaching or suggestion for the inclusion of such material, nor does Perali teach or suggest any include of any features of a marine display contained with a glass-type tank. Thus, there is no motivation, suggestion or teaching to combine these references.

Based on the above, reconsideration of this rejection is respectfully requested.

**NEW CLAIMS 45-49**

New Claims 36-41 have been added. No new matter has been added. New Claims 45-47 include the limitations set out in the markush group of claim 44 in separate dependent form. New claims 48 and 49 set out limitations of a closed end and a transfigurable slit as related to the closure feature of the present invention which were previously included in independent claims 32 and 34. These limitations have been removed from the independent claims and rewritten in dependent form. No new matter has been added. As these claims depend from Claims 32 and 34, for the reasons set forth above, it is respectfully submitted these claims are in condition for allowance.

**CONCLUSION**

For the reasons set forth above, it is respectfully submitted the above claims, as amended, are not rendered unpatentable over the cited prior art and are in a condition for allowance. Reconsideration of the rejections is respectfully requested.

Respectfully submitted,



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